

# MEMORANDUM

## Texas Department of Human Services Long Term Care Policy \* Survey and Certification Clarification

**TO:** Regional LTC-R Directors

**FROM:** Evelyn Delgado  
Assistant Deputy Commissioner  
Long Term Care (LTC-R)

**SUBJECT:** Notification: Abuse and Neglect Allegations – **S&CC Memorandum 03-15**

**DATE:** November 14, 2003

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This is a follow up to our discussions of the notification of law enforcement regarding allegations of abuse and neglect and Health Insurance Portability and Accountability Act (HIPAA) requirements.

### Law Enforcement Notification

Law enforcement must be notified when there is a substantiated allegation of abuse, neglect, or exploitation in a facility. An unsubstantiated allegation is also referred to law enforcement when the individual resides in a nursing facility or Intermediate Care Facility for the Mentally Retarded (ICF-MR). Please [refer to the attached table](#) for notification requirements by facility type.

In addition, state law requires that substantiated allegations for individuals residing in Assisted Living Facilities be sent to the Texas Department of Protective and Regulatory Services (PRS). State Office staff will work with PRS to determine how best to provide this information. Regional staff will not be responsible for the PRS notification.

If you have any questions concerning the required notification to law enforcement, contact Bevo Morris in Policy Development at (512) 438-2363.

### HIPAA Notification Requirements

HIPAA requires that the resident/client or a [personal representative](#) be notified when an allegation of abuse or neglect is referred to law enforcement. A personal representative is a person legally authorized to make health care decisions on an individual's behalf or act for a deceased individual or the estate. In situations where the resident/client is incompetent and does not have a personal representative or the personal representative is not known, send the appropriate notification letter to the Nursing Home Administrator, Facility Manager, or Superintendent of the State School. Staff is not required to send notification if they believe sending notification would place the resident/client at risk of serious harm. Staff should document this decision in the survey record.

## **Reporting Disclosures**

The allegation report made to law enforcement for the resident/client is considered a disclosure of protected health information (PHI). Disclosures of PHI must be entered into the HIPAA Disclosure Tracking and Accounting System (DTAS). Information from DTAS is used to provide a report to the resident/client requesting a record of PHI disclosures. Staff should contact their regional HIPAA Coordinator if they have questions about regional reporting procedures.

**Note:** When reporting a disclosure, enter the name of the resident/client identified in the allegation of abuse or neglect made to law enforcement. Do not record the names of other residents/clients included in the investigation report, unless abuse or neglect is also substantiated for the referenced individuals.

Refer any questions about HIPAA privacy requirements to Jim Holster, DHS Privacy Officer, at (512) 482-3108 or Peggy Roll, Assistant General Counsel, at (512) 438-3812.

[signature on file]

Evelyn Delgado

ED:jlh

Attachment

## NOTIFICATION PROCEDURES BY FACILITY TYPE

(Complaints of Abuse, Neglect, and Exploitation)

(Return to [Memorandum](#))

LAW ENFORCEMENT NOTIFICATION POLICY	
DHS is required to notify law enforcement in cases of abuse, neglect, or exploitation for the following types of facilities. Refer to the table below to determine the notification requirement for substantiated and unsubstantiated allegations.	
HIPAA RESIDENT/CLIENT NOTIFICATION REQUIREMENTS	
When a report has been sent to law enforcement concerning an allegation of abuse or neglect, HIPAA requires that the resident/client or a <a href="#">personal representative</a> be informed of the report. Refer to the table below for notification letters.	
<b>Exception Rules</b> <ul style="list-style-type: none"> <li>If the resident/client is not mentally competent and a personal representative has not been designated or is not known, send the notification letter, as appropriate, to the Nursing Home Administrator, Facility Manager, or Superintendent of the State School.</li> <li>Do not send the HIPAA letter if in your professional judgment, sending the letter would place the individual at risk of serious harm. If notice is not sent, document the justification in the survey record.</li> </ul>	

Notification to Law Enforcement				Notification to the Resident/Client	
1. Determine if the allegation is substantiated or unsubstantiated. 2. Send the appropriate notification to law enforcement.				3. Notify the resident/client or personal representative when a referral is sent to law enforcement. Refer to the HIPAA <i>Letter</i> column for appropriate format. 4. Letters are listed in priority of notification. Choose the appropriate one.	
Facility Type	Notification To	If Allegation is		Address the HIPAA Letter to:	
		Substantiated	Unsubstantiated	If Substantiated	If Unsubstantiated
Nursing Facility	DA and municipal law enforcement or sheriff	YES	YES	<a href="#">Resident</a> <a href="#">Personal Representative</a> <a href="#">Facility Administrator</a>	<a href="#">Resident</a> <a href="#">Personal Representative</a> <a href="#">Facility Administrator</a>
ICF-MR	DA and appropriate law enforcement	YES	YES	<a href="#">Personal Representative</a> <a href="#">Facility Manager</a>	<a href="#">Personal Representative</a> <a href="#">Facility Manager</a>
State School	DA and appropriate law enforcement	YES	NO	<a href="#">Personal Representative</a> <a href="#">Superintendent</a>	NA
Assisted Living Facility	Appropriate law enforcement agency, if criminal offense	YES	NO	<a href="#">Resident</a> <a href="#">Personal Representative</a> <a href="#">Facility Manager</a>	NA

Notification to Law Enforcement				Notification to the Resident/Client	
1. Determine if the allegation is substantiated or unsubstantiated. 2. Send the appropriate notification to law enforcement.				when a referral is sent to law enforcement. Refer to the HIPAA <i>Letter</i> column for appropriate format. 4. Letters are listed in priority of notification. Choose the appropriate one.	
Facility Type	Notification To	If Allegation is		Address the HIPAA Letter to:	
		Substantiated	Unsubstantiated	If Substantiated	If Unsubstantiated
Adult Day Care	Appropriate law enforcement agency if criminal offense	YES	NO	<a href="#">Client</a> <a href="#">Personal Representative</a> <a href="#">Facility Manager</a>	NA

Example 1 - Substantiated Abuse Referral  
(Letter to Resident or Client)  
[\[Return to Table\]](#)

Date \_\_\_\_\_

Dear \_\_\_\_\_:

The privacy rules authorized by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) require that Texas Department of Human Services (DHS) notify an individual any time DHS discloses information to law enforcement about an individual it believes to be a victim of abuse or neglect.

This letter is to inform you that an allegation you were a victim of abuse or neglect has been referred to (name of law enforcement agency or agencies).

If you have any questions regarding this notification, please contact me at \_\_\_\_\_.

Sincerely,

[Regions decide who should sign]

Example 2 - Substantiated Abuse Referral  
(Letter to Personal Representative)  
[\[Return to Table\]](#)

Date

Dear \_\_\_\_\_:

The privacy rules authorized by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) require that Texas Department of Human Services (DHS) notify an individual any time DHS discloses information to law enforcement about an individual it believes to be a victim of abuse or neglect.

This letter is to inform you that an allegation that (name of resident or client) was a victim of abuse or neglect has been referred to (name of law enforcement agency or agencies).

If you have any questions regarding this notification, please contact me at \_\_\_\_\_.

Sincerely,

[Regions decide who should sign]

Example 3 - Unsubstantiated Abuse Referral  
(Letter to Resident)  
[\[Return to Table\]](#)

Date \_\_\_\_\_

Dear \_\_\_\_\_:

The privacy rules authorized by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) require that Texas Department of Human Services (DHS) notify an individual any time DHS discloses information to law enforcement concerning an allegation of abuse or neglect.

DHS staff investigated an allegation that you were a victim of abuse or neglect and determined that the allegation was not substantiated. Texas law requires our staff to send a report of the agency findings to (name of law enforcement agency or agencies).

If you have any questions regarding this notification, please contact me at \_\_\_\_\_.

Sincerely,

[Regions decide who should sign]

Example 4 - Unsubstantiated Abuse Referral  
(Letter to Personal Representative)  
[\[Return to Table\]](#)

Date

Dear \_\_\_\_\_:

The privacy rules authorized by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) require that Texas Department of Human Services (DHS) notify an individual any time DHS discloses information to law enforcement concerning an allegation of abuse or neglect.

This letter is to inform you that DHS staff investigated an allegation that (name of resident) was a victim of abuse or neglect and determined that the allegation was not substantiated. Texas law requires our staff to send a report of findings to (name of law enforcement agency or agencies).

If you have any questions regarding this notification, please contact me at \_\_\_\_\_.

Sincerely,

[Regions decide who should sign]



Example 5 - Substantiated Abuse Referral  
(Letter to Superintendent, Facility Manager, or Nursing Home Administrator)  
[\[Return to Table\]](#)

Date

Dear \_\_\_\_\_:

The privacy rules authorized by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) require that Texas Department of Human Services (DHS) notify an individual any time DHS discloses information to law enforcement concerning an allegation of abuse or neglect.

DHS staff investigated an allegation that (name of resident) was a victim of abuse or neglect and found that the allegation was substantiated. Texas law requires that DHS send a report of the agency findings to (name of law enforcement agency or agencies).

Please file this notification in the records for this patient and share with the resident's/client's personal representative, as you deem appropriate.

If you have any questions regarding this notification, please contact me at \_\_\_\_\_.

Sincerely,

[Regions decide who should sign]

[Example 6 - Unsubstantiated Abuse Referral](#)  
(Facility Manager or Nursing Home Administrator)  
[\[Return to Table\]](#)

Date \_\_\_\_\_

Dear \_\_\_\_\_:

The privacy rules authorized by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) require that Texas Department of Human Services (DHS) notify an individual any time DHS discloses information to law enforcement concerning an allegation of abuse or neglect.

DHS staff investigated an allegation that (name of resident/client) was a victim of abuse or neglect and found that the allegation was not substantiated. Texas law requires that DHS send a report of the agency findings to (name of law enforcement agency or agencies).

Please file this notification in the records for this patient and share with the resident's/client's personal representative, as you deem appropriate.

If you have any questions regarding this notification, please contact me at \_\_\_\_\_.

Sincerely,

[Regions decide who should sign]

Example 7 - Substantiated Abuse Referral  
(Letter to Adult Day Care Facility Manager)  
[\[Return to Table\]](#)

Date

Dear \_\_\_\_\_:

The privacy rules authorized by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) require that Texas Department of Human Services (DHS) notify an individual any time DHS discloses information to law enforcement concerning an allegation of abuse or neglect.

DHS staff investigated an allegation that (name of client) was a victim of abuse or neglect and found that the allegation was substantiated. Texas law requires that DHS send a report of the agency findings to (name of law enforcement agency or agencies).

Please file this notification in the records for this client and share with the client's personal representative, as you deem appropriate.

If you have any questions regarding this notification, please contact me at \_\_\_\_\_.

Sincerely,

[Regions decide who should sign]

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### **Personal Representative**

**Note:** A personal representative is defined differently from the term “responsible party” as used in the Long Term Care program. Only the client’s personal representative can exercise the client’s rights with respect to individually identifiable health information. Refer to the following definitions of personal representatives:

### **Personal Representatives for Adults and Emancipated Minors**

If the client is an adult or emancipated minor, including married minors, the client’s personal representative is a person who has the authority to make health care decisions about the client and includes a:

- person the client has appointed under a medical power of attorney, a durable power of attorney with the authority to make health care decisions, or a power of attorney with the authority to make health care decisions;
- court-appointed guardian for the client; or
- person designated by law under section 313.004 of the Health and Safety Code to make health care decisions when the client is in a hospital or nursing home and is incapacitated or mentally or physically incapable of communication.

### **Personal Representatives for Unemancipated Minors**

A parent is the personal representative for a minor child **except** when:

- the minor child can consent to medical treatment by him or herself. Under these circumstances, do not disclose to the parent information about the medical treatment to which the minor child can consent. A minor child can consent to medical treatment by him or herself when the:
  - minor is on active duty with the US military;
  - minor is age 16 or older, lives separately from the parents, and manages his/her own financial affairs;
  - consent involves diagnosis and treatment of disease that must be reported to local health officer or the Texas Department of Health;
  - minor is unmarried and pregnant and the treatment (other than abortion) relates to the pregnancy;
  - minor is age 16 years or older and the consent involves examination and treatment for drug or chemical addiction, dependency, or use at a treatment facility licensed by the Texas Council on Alcohol and Drug Abuse;
  - consent involves examination and treatment for drug or chemical addiction, dependency, or use by a physician or counselor at a location other than a treatment facility licensed by the Texas Council on Alcohol and Drug Abuse;
  - minor is unmarried, is the parent of a child, has actual custody of the child, and consents to treatment for the child; or

- consent involves suicide prevention or sexual, physical, or emotional abuse.
- A parent is not the personal representative of a minor child when a court is making health care decisions for the minor child or has given the authority to make health care decisions for the minor child to an adult other than a parent or to the minor child. Under these circumstances, do not disclose to parent information about the health care decisions not made by the parent.

### **Personal Representatives for Deceased Individuals**

The personal representative for a deceased client is an executor, administrator, or other person with authority to act on behalf of the client or the client's estate. These individuals include:

- An executor, including an independent executor;
- An administrator, including a temporary administrator;
- A surviving spouse;
- A child;
- A parent; and/or
- An heir.

Consult your regional attorney if you have questions about whether a particular person is the personal representative of a client.

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